

**PLANNING AND ZONING COMMISSION  
MINUTES  
September 23, 2003**

PLACE: Room 206  
Town Hall

TIME: 8:00 P.M.

PLANNING AND ZONING COMMISSION MEMBERS ATTENDING:  
Damanti, Spain, Kenny, Forman, Bigelow, Conze

STAFF ATTENDING: Ginsberg, Keating

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Chairman Damanti explained that the application of Foster Kaali-Nagy regarding property on Five Mile River Road would need to be continued because the matter had not yet been decided by the Zoning Board of Appeals or Environmental Protection Commission. The Commission agreed to take the matter out of order and open the public hearing regarding **Coastal Site Plan Review #188 Flood Damage Prevention Application #199 and Land Filling and Regrading Application #106 for Foster Kaali-Nagy at 59 Five Mile River Road.** After the hearing was opened and a brief discussion, the following motion was made: that the Commission recess the public hearing and continue the discussion regarding this matter at 8:00 p.m. on October 28, 2003. The motion was made by Mr. Bigelow, seconded by Mr. Spain and unanimously approved.

Chairman Damanti read the following agenda item:

**Continuation of Public Hearing regarding Coastal Site Plan Review #53-F, Flood Damage Prevention Application #43-F, Ann B. Lunn, 8 Contentment Island Road.** Proposing to modify plans for the previously approved, but never constructed single-family residence and perform related site development activities within regulated areas. The subject property is located on the west side of Contentment Island Road approximately 439 feet south of its intersection with Tokeneke Beach Drive and is shown on Tax Assessor's Map #67 as Lot #63, R-1 Zone.

Attorney Robert Maslan explained that the public hearing had been continued so that they could address some of the open questions. He submitted an updated survey map that is dated September 23, 2003. He also submitted a copy of the Zoning Permit that had been granted in 2001, and the Building Permit and Letters of Extension of the Building Permit. He said he noted that 90 day extensions had been granted by the Building Official and that the existing permit is still active and valid according to Lisa Mason, Secretary to the Building Official.

In response to questions regarding the septic system design and extent of disturbance on the site, it was noted that the health official and the applicant's engineer feel that the septic system design is adequate. However, the Zoning Enforcement Officer feels that the grading plan submitted with the application materials will not work properly given the details of the septic system. It is also noted that the construction on the site will be extensive and that disturbance of the septic system or reserve septic area cannot occur. No plans have been submitted to indicate how the construction activity, particularly the parking of vehicles for workers, can take place on the site. It was noted that the Tokeneke Association apparently now prohibits construction workers from parking on the Association streets.

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Mrs. Forman noted the letter from Susan Ligorì expressing concern about flooding. Attorney Maslan said that excess flood water will flow toward the waters of Scott's Cove and will flow around the site as the flood waters would do today. Mrs. Lunn said that she spoke to Mrs. Ligorì about this matter and explained to her that the construction of the house will not have any adverse impacts on flood conditions. She referred to the letter of June 2, 2003 from her engineer, Richard Bennett. She also noted that his letter notes that there is no need for storm water detention because the site is immediately adjacent to Scott's Cove.

Mr. Spain questioned why the reserve area looks smaller than the primary septic system area. Mr. Maslan explained that the layouts of the two areas are different and that a reserve area is no longer required because of a change in the state health code.

A question was asked why the submitted plans refer to Map No. 9 when the proposed new house would be No. 8 Contentment Island Road. Jeff McDougal explained that No. 9 is the residence of Ann Lunn and was left on the survey from the original subdivision map. He said that it is a misprint of the title and that it will be corrected.

In the discussion that followed it was noted that there is a channel or ditch of tidal wetland that is located between the street and the proposed house location and that this ditch or channel is lower than the street level. On the northeast side of the proposed house, the grading will slope down toward the ditch so that water can drain away from the house. Only the driveway could drain toward the street and it was noted that they could have a grate or drainage system installed to catch the water before it drains to the street. They could also accomplish this by creating a dip in the driveway to shed water toward the north or south. It was noted that the driveway could either be an impervious surface or a pervious (asphalt) surface.

Attorney Maslan said that other than the required footings, there is no need for excavation for the building. The septic system will be dug into the existing grade and the plan does not call for much fill in that area. The Zoning Enforcement Officer, David Keating, said that implementation of the septic plan will be difficult because the grading shown on the submitted plan will conflict with the minimum ground coverage requirements. In particular, the pipe leading from the house to the septic system would apparently not be covered and the end of the septic system farthest from the house might not have sufficient coverage. It was noted that the septic system is the minimum design necessary for the proposed five bedroom house. Zoning Enforcement Officer Keating suggested that they could use engineered teepee style galleries that would have more efficient treatment of effluent and therefore cause less disturbance of the site. Attorney Maslan said that every system installation has a need for adjustments as it is installed in the ground. If this system can be adjusted within the limitations of the site, then they will do so. If it needs to be adjusted in a substantial manner, then that will be a different story.

Mr. Spain suggested that it might be appropriate to build the septic system and verify its adequacy prior to constructing the residence. In this way, if there are any deviations needed from the septic system design, it might result in a smaller house rather than infringing on the environmentally sensitive portions of the site. This could avoid the need to compromise the septic system, but it might result in reducing the house construction from five bedrooms to four bedrooms. Attorney Maslan said he did not know how they could implement that type of program. He suggested that if the Commission approve the five bedroom design and then

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require an as-built drawing of the septic system prior to the issuance of a certificate of occupancy for the house. He said it would not make sense to disturb the site twice. Mr. Spain said that he was trying to address the practical implementation issue before it is a problem that reaches beyond the point of no return. He said that if filling is needed or if the septic system needs to be adjusted, then they could reduce the size of the septic system as much as necessary to allow for only a four bedroom residence.

Mr. Kenny suggested that prior to house construction, it might be best to have the applicant install the septic system, then do the filling and regrading necessary and then have the surveyor verify that everything has been installed properly. He said this might be appropriate since there is zero wiggle room. If modifications are necessary, those modifications would be to the size, the location of the house and the modifications would result in less house rather than less septic system or having the septic system infringe on the conservation easement area. He said that this would protect the conservation easement and protect everyone to make sure that the grades achieved on the site would be in accordance with the approved plan.

Mrs. Lunn said that she spoke with Vince Proto of the Health Department and he says that everything is up to code. She said that the septic system was designed by Richard Bennett, a professional engineer, who is certified and licensed to do this type of work. She said that it is beyond her why we would need another engineer to verify the design once it is built. Mrs. Lunn said that no one is willing to buy a four bedroom house on the water's edge. She said that other people are able to get approvals because they do not have neighbors nagging the Health Department or Planning Department.

Mr. Kenny said that because of the exactness of the design and the possibility of change during the implementation and the fact that there is no margin for error because the septic system is so close to the conservation easement and the environmental resources, the Commission is very concerned about the proposed activities.

Jim Solberg of 7 Contentment Island Road said that Mrs. Peters joins in the opposition to the application but could not be in attendance at the hearing. He also said that George Castell also opposes the project and could not attend. Mr. Solberg said that drainage is a key concern. He said that the depressed area between the street and the house location is flooded by the highest tides and storms and that when this depressed area is full of water it would not be able to carry any extra water from the house construction. He said that the extra water from the house and driveway construction would flow toward the street and the neighbors. Mr. Solberg said that the property has environmentally sensitive features, including tidal wetlands, around the perimeter. He said that the driveway was built after 1987 and that since then the Connecticut Department of Environmental Protection Commission has changed its rules and the work would now apparently need DEP approval. Mr. Solberg said that the property was filled years ago using questionable material and that it is not a naturally occurring quality soil. He said that it is apparently Mrs. Lunn's intent to market this as a five bedroom house site and then the new owner would build something different than what the Planning & Zoning Commission is being asked to act on at this time. Mr. Solberg said that the new materials requested by the Planning & Zoning Commission arrived only on the Thursday or Friday prior to the Tuesday public hearing. This did not give sufficient time for the neighbors or Commission members to review the new materials.

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Mr. Solberg said that the impact of the construction on flooding and flood waters needs to be carefully evaluated by the Commission and that it seems excessive to design a five bedroom house with a three car garage and an in-ground pool on this environmentally sensitive property. He said that it appears that the height of the house will also not comply with regulations because the midpoint of the roof would be an elevation 38. He said that fill will or may be needed to implement the plan and he was very concerned about any filling that could take place. Mr. Solberg said that Mrs. Lunn's claim that the four bedroom house site is not marketable is only the result of the fact that her asking price has been dramatically increased as if it were already approved as a five bedroom site. Mr. Solberg said that the percolation tests, which are the basis for the septic system design, were conducted in 1986 or 1988. Since then there has been a change in the definition of the mean high tide line from 3.65 feet to elevation 4.2 feet above sea level. He said that the septic system design is based on very old data and that the circumstances and conditions of the site have changed. He said that he raised this issue with Vince Proto in the Health Department and that Mr. Proto agrees that at some point it will be necessary to retest the site. Mr. Solberg said that storm water runoff, high ground water condition, and flooding will affect the operation of the septic system and could result in sewage impacts to the waters of Scott's Cove. Mr. Solberg said that Mr. Proto is not familiar with any similar system so close to environmental concerns as found on this site.

Mr. Solberg said that time limitations imposed on the previously granted Building Permit by the Building Official can only be extended if there is reasonable cause. He said that requests for extensions have been submitted every quarter but there is no form of approval granted by the Building Official and no written confirmation that the Building Permit is still valid. He also noted that there is an extension request dated December 2, 2003, which is a xerox copy of another extension request. He said that these extensions are apparently not being requested or granted in a proper fashion. Mr. Solberg said that the applicant has engaged in a process of incremental expansion of the approvals from what was originally granted and that there is no basis for the expansion and in fact there may not even be a valid Building Permit at this time. He said that new percolation tests are needed to verify the adequacy of the septic system and that a new application to the Commission is needed because the old permit has become null and void.

Robert Cudd of 26 Contentment Island Road said that his father had filled this property many years ago by putting large rocks and then dumping sand and other dredge material from the cove into the rocks. Mr. Cudd said that the percolation tests should be redone because the soil conditions at the site are varied and of low quality. He said that when the property was purchased (it was sold by his father's estate), it was the Town's position that it was not a buildable lot. When asked to give details about that statement, Mr. Cudd said that his recollection was that according to former Town Planner, Raymond Nurme, the septic system limitations, flooding, and other factors rendered the property as not being a buildable lot. Mr. Cudd said that the size of the proposed house is not appropriate and that the Commission should be extremely careful about the septic system design because retesting should be required.

Terry Wood represented the Land Trust of Darien and explained that the Land Trust owns approximately two acres of land to the south of the subject property. A letter was read expressing concern for the environmental and ecological aspects of the site.

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Lily Barston, daughter of the applicant, said that the land owned by the Land Trust has a deed restriction about the use of the property for Tokeneke residents. Mrs. Barston said that there are other septic systems that are located on low sites in the area and that they all work. She said that in this case a primary and a reserve septic system area have been designated on the plan.

Richard Orsi, son of the applicant, said that the zoning regulations are a derogation of common law property rights and that many experts have worked on the design of this proposed development. He said that the application should be approved because it complies with the regulations.

Terry Wood of the Land Trust said that the Land Trust is allowed to have groups of 25 or less come to the site twice each year.

Mrs. Lunn said that the original design of the house was a 4,200 square foot cape style house. That is what the old permit had granted. The current proposal, is 6,000 square feet of building including the garage space.

Attorney Maslan said that flooding in the area is caused by the high tide and the waves. It is not caused by construction or development activity that might take place on the subject property. He said what happens on this site will not impact the flooding on neighbor's properties and that the state DEP does not need to approve the driveway or any other aspects of the development. He said that it does not matter to the applicant whether the Commission treats this as a modification of the existing permit or as a new permit. Mr. Maslan said that the Building Official has concluded that the Building Permit is still valid and that the way that he runs his office is not in the control of the applicant. He said that the applicant has submitted written requests for extensions and that those requests speak for themselves. The requests have been accepted by Charles Saverine, the Building Official. Attorney Maslan also said that the percolation tests performed in 1986 and 1988 show that the percolation rates were acceptable and that this information was available to the designing engineer and the Health Department when discussing the most current design. He also noted that many waterfront properties were created by filling and that the septic system has been approved by the Health Department.

Mr. Spain asked if the mean high water line has changed since those percolation tests were done? Would that be a different circumstance that would warrant retesting? Attorney Maslan said that the definition has changed in the regulations and the definition was only changed in recognition of the physical change that had previously occurred. He said that this proposed septic system would not be the closest septic system to mean high water and that the Health Code is up to Vince Proto of the Health Department to administer and enforce. The septic system design is compliant with the health code requirements and that there is a 50' wide buffer between the septic system and any open water. Attorney Maslan said that despite what Mr. Cudd said, the original subdivision of this property had been approved by the Planning & Zoning Commission while Raymond Nurme was the Town Planner and the applicant had to prove at that time that the site was buildable. The Commission's approval of the subdivision verifies that the site is buildable. Attorney Maslan said that there is plenty of environmental protection built into the design of this proposed development.

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At 9:40 P.M., there being no further comments, the following motion was made: that the Commission close the public hearing regarding this application. The motion was made by Mr. Spain, seconded by Mr. Conze and unanimously approved.

Mr. Damanti then read the next agenda item:

**Continuation of Public Hearing regarding Coastal Site Plan Review #184, Flood Damage Prevention Application #195, Land Filling & Regrading Application #102, Friends of Goodwives River, 33 and 30 Goodwives River Road, and 11 Queens Lane.** Proposing to repair the Upper Pond Dam, construct a fish ladder, remove approximately 9,000 cubic yards of sediment and restore aquatic and shoreline habitats of the Upper Pond. The subject properties are located on the Goodwives River and at 33 Goodwives River Road approximately 500 feet north of its intersection with Old Kings Highway South.

Tom DeSantos of Fuss & O'Neill, Consulting Engineers, explained that the project involves removing approximately 9,000 cubic yards of sand and sediment from the River. Some of this material will be used as fill along the edge of the river. The balance would be removed from the area. He said that they have received approval from the Environmental Protection Commission. Mr. DeSantos explained that they have revised the plans to make it clear that they will not be doing any work along the easterly edge of the River that might be on the Hart property. He said that they have had the boundary determined by a land surveyor and field stakes have been installed on the property line. He said that they have contacted the Connecticut Department of Environmental Protection (DEP). Their standards are to avoid having any rise in the flood plain in excess of 1/100<sup>th</sup> of one foot. He said that the revisions to the plan will actually lower the flood plain level. Mr. DeSantos said that they have received written authorization from all of the adjacent owners except the Harts who own property along a portion of the east side of the Goodwives River. He said that is why they have revised the plan to make sure that all grading will be outside of the Hart property. Phil Moresci said that pins or stakes were previously set by Redniss & Mead, Land Surveyors.

Richard Windels said that the pins and stakes were put there many years ago for a previous property owner.

Attorney Robert Maslan spoke on behalf of Hart Investment LLC. He referred to the July 27, 2003 letter that had previously been submitted. He said that this is not a proper application because the non-profit organization does not have standing to bring the application and there are a number of other faults with the request. He said that during the Environmental Protection Commission review of the application, the attorney for the Brinkley's made it clear that they give permission to use their land as access, but they as the property owner would not be responsible for compliance with any aspect of the application or any conditions of the permit.

Attorney Maslan said that a review of the plans and submitted application materials indicates that some of the work would be on the Hart property and that is not permitted. He said that work within the floodway is much more difficult and strictly regulated than work within the flood plain. He said that the floodway line is not even shown on the submitted application materials and therefore the application is not in compliance with the regulations. He said that the applicant has apparently submitted revised plans and information, but he and his client would need time to

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review the engineering report and review the revised plans before commenting on what has recently been submitted to the Commission. He said that the hearing should not be closed until they have had an opportunity to review and comment on the new material. Mr. Maslan said that the Hart family objects to the proposed changes in the river level. He said that the proposed work is not an immediate response to an emergency. He said that the dam failed many, many years ago and the Commission should not be fooled into thinking that the work needs to be done imminently.

Richard Windels said that there is no issue of standing by the Friends of Goodwives River. He said that the organization has been sanctioned and in fact the Town and other funding groups have thoroughly reviewed the legal status of the group and have decided to fund the project. He said that the drawings show that the property lines as previously determined and marked by a licensed land surveyor. He said that the FEMA flood zone line is marked on the plans.

Mr. Windels said that part of the dam collapsed in 1997 or 1998 and that the old weir board had broken years before that. He said that the previous risk for flooding is carrying debris downstream and clogging and damaging the downstream facilities. He said that the application would result in restoring the water level of the pond to elevation 12.5' above sea level as it was in 1929.

Phil Moreschi said that the DEP has been concerned about several aspects of the project but found that there was no negative impact to the flood levels. He said that they have confirmed that the boundary shown in the field matches the plans and that there will be no activity on the Hart property. He agreed that it would be more desirable to do minor maintenance work on a frequent basis, but in this particular situation they must make up for long deferred maintenance. He said that they propose to install a sediment fore bay on the upper portions of the pond so that it could easily be accessed and cleaned out on a frequent basis. There is no financial commitment regarding the long term maintenance of the pond, but if the pond is not worked on in the near future, the problem will only get worse. He said that there are no records of past dredging operations, but noted that there has been a rapid accumulation of sediment in the last 20 years. He said that part of the project is to remove obstructions to the flood flows. Photographs of the old pond were submitted for review.

Flora Smith of 42 Hamilton Lane said that she lives on the top portion of the Goodwives River and agreed that the river changes. The river runs from the top of the community to Long Island Sound. She said that this project needs to be approved and implemented.

Richard Windels said that they are trying to work out a schedule and funding plan for the long term maintenance of the pond. This would include the periodic removal of sediment from the fore bay. He said that in 2001 and 2002 approximately \$500,000 was spent to dredge portions of Gorham's Pond, Darien Harbor and Long Island Sound. Approximately 43,000 cubic yards of material needed to be removed. It was a very expensive operation and it would be much less expensive to frequently remove from the fore bay than to undertake large scale dredging operations.

In response to questions, Mr. Windels said that no public access to the pond has been incorporated into the plan. This is because the pond is surrounded by private properties. He said

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that there is also a disadvantage and a discouragement to providing public access near the fish ladder. He said that public access should not be a condition of being able to dredge and maintain the pond.

Commission members noted that the Public Hearing had been opened on July 22, 2003 and that the hearing must, by statute, be concluded prior to September 30, 2003. There are no additional meetings scheduled between now and the end of September. The Commission members asked the applicant if they would be willing to grant an extension of the time period in which to conclude the Public Hearing.

Carol Smith of 36 Goodwives' River Road directed the Commission's attention to a 1992 photograph of the pond. She said that they have been working on this project for a long time and only now have they received funding and some of the permits necessary to undertake the work.

Mr. Windells, speaking on behalf of the Friends of Goodwives' River, agreed to grant the extension so that the Public Hearing could be continued on September 30<sup>th</sup>.

The following motion was made: that the Commission continue the Public Hearing on September 30, 2003. The motion was made by Mr. Spain, seconded by Mr. Conze and unanimously approved.

Mr. Damanti read the next agenda item:

**Amendment to Zoning Map, Planning & Zoning Commission, Five Mile River Road area.**

Proposing to amend the Darien Zoning Map by adjusting the zone boundary between the R-1/2 and R-1 Zones in the area near Five Mile River Road. This affects a number of properties shown on Tax Assessor's Maps #66 and #67 on Five Mile River Road, Old Farm Road, Berry Lane, Searles Road, Indian Trail, Davis Lane, and Edgehill Drive.

Director of Planning Jeremy Ginsberg, reviewed a display board and explained that an error had been made in the Zoning Map and this error was discovered earlier in 2003. In the vicinity of Old Farm Road and Five Mile River Road, there are several places where the zone boundary line is specifically labeled as being 300 feet to the west of Five Mile River Road. The Geographic Information Systems (GIS) computer mapping resulted in the zone boundary line being very different from the old, hand produced graphic map of the zone district boundaries. In 2003, the Planning & Zoning Commission determined that the zone boundary line was 300 feet from the west side of the street right-of-way. At that same time, the Planning & Zoning Commission directed the staff to study the situation to determine if there was a way to make the zone boundary line more clear and to be coincidental with property lines wherever possible. The 2003 Amendment of the Town Plan of Development (the Amendment was adopted March 11, 2003) was read aloud and submitted for the record, it calls for the careful examination of zone boundary lines and clarification wherever practical. Mr. Ginsberg reviewed the highlighted map and indicated that areas shown in pink are currently in the R-1 Zone and could be converted to the R1/2 Zone. Areas in yellow are currently in the R1/2 Zone and could become R-1. Wherever possible, the proposed adjustments were made to the east or west to coincide the zone boundary lines with property lines, where practical. In some locations this was not practical and so the zone boundary line remains unchanged.



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Mr. Ginsberg submitted the Area and Bulk Schedule of the Zoning Regulations for the R1/2 and R-1 Zones. He said that if the amendments to the map are adopted, 15 properties would have less restrictive regulations and 9 properties would have slightly more restrictive regulations. In general, the zone boundary line is moving to the east, but in some cases, the adjustment is to the west. On Berry Lane, there are still several lots that would be split by the zone boundary line. He said that it is up to the Commission to determine what action is appropriate, if the zone line is to be moved at all. The Commission could adjust the zone boundary line or leave it in its present location.

Mr. Ginsberg said that four lots would still remain being split by the zone boundary line and 24 lots would be changed. He said that each of the circumstances are slightly different and that there are no vacant building lots in the area. He submitted a copy of the Town Inland Wetlands and Watercourses Map.

Commission members noted that they had received letters from the Switzers, two from the Gardners, and a letter from the Finns. Mr. Ginsberg reviewed the letter from the Darien Tax Assessor indicating that the revaluation process will raise the assessed values of the properties and that the zone boundary location, whether it is to remain in its present location or is to be modified, will not impact property values. Mr. Ginsberg said that they would not be changing more than 45% of any individual lot and that when a lot is in more than one zone, the restrictions for each zone apply to that portion of the lot and there is no extension of the zoning restrictions onto the other portion of the lot in a different zone.

Todd Robbins of 7 Edgehill Road said that if the zone change is approved as proposed, then his neighbor to the east could construct an accessory building 10 feet from the common boundary line. At present, the setback requirement is 40 feet because the common property line is in the R-1 Zone and small portion of the neighbor's property is in the R-1 Zone. He said that the difference of allowing a detached accessory structure 30 feet closer to his (Mr. Robbin's) property will affect the value of the property. When he bought his site, he knew that his neighbor had a 40 foot setback requirement and the proposed change in the zone boundary would reduce that to only a 10 foot setback. He said that the house at 142 Five Mile River Road was a small house and now it is a 4 story, 5 bedroom house. He said another house at 134 Five Mile River Road is much larger than it used to be and it is much more imposing on the neighborhood. He said that an oversized accessory structure at the Ungermack property, at the end of Davis Lane, would be possible on his neighbor's property. He said that the zone change will open up a Pandora's Box of large accessory structures being placed very close to common boundary lines.

John Gardner of 45R Old Farm Road said that he received a letter of notice of the hearing. He said that property owners in the R-1/2 Zone gain and owners of property in the R-1 Zone lose. The gain for the residents of the R-1/2 Zone is that they get a much larger buildable area and the loss for the residents of the R-1 Zone is the substantial reduction in the separation of buildings and the substantial loss of buffer area. He said that there is always an advantage to the owners of R-1/2 property and always a disadvantage to the owners of the R-1 property. The proposed rezoning may create non-conforming situations and if a site in the R-1/2 zone is more than one acre in size, it would be ripe to be subdivided. Mr. Gardner read from the Town Plan of Development Amendment. He said that the map that he received with the notice was very small scale and he

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would much prefer to see a map drawn at a 1" = 100' scale and have it show all structures and all existing and proposed setbacks. He said that zoning regulations should recognize and preserve the character of the neighborhood not take actions that will substantially alter and destroy the character. He said that the character should take precedence over the desire to make the map look graphically more attractive.

In the discussion that followed, it was noted that the proposal to amend the map as a result of the Commission's action earlier in the year and that the Commission needs to carefully examine the situation before rendering a decision. The input from the public is a valuable factor. The desire to make the zone lines coincide with property lines rather than have an arbitrary zone line parallel to a street right-of-way, it is logical but the Commission must determine what the most appropriate location for the zone line should be. If the Commission was starting from scratch, the zone boundary lines would most likely be along property lines wherever practical.

Art Hooper of 51 Old Farm Road spoke in support of the proposal. He said that the highlighted map very clearly illustrates the minor nature of the adjustment. In his case, the old map shows the zoning line at the rear lot line and Zoning and Building Permits were based on that old map. Now the Commission has to determine that the zone boundary line is not on the rear property line. He said that the proposed amendment would clarify and correct the situation. He said that the imposition of zoning regulation and adjustment of zoning boundary lines is not a taking of someone's property right as may be claimed by others.

Bill Tishian of 6 Davis Lane said that he is opposed to the rezoning and that his property would lose value because of it.

Fred Elliot of 14 Davis Lane read aloud a letter from his neighbor, Mr. Lindenberger, at 11 Davis Lane. Mr. Elliot questioned why the Commission was proposing the change to the zone boundary.

Bill Hanlon of 7 Davis Lane said that there are 10 houses in the Davis Lane Association and eight of them are in the R-½ Zone but five of them have less than ½ acre of land. He said that the Commission should not change the status quo just to tidy up the map.

Mrs. Forman said that originally the thought of clearing up the map made sense but now it does not seem to make as much sense as it originally had.

Attorney Wilder Gleason said that the neighbor's property is not being taken if the zoning is in the reasonable best interest of the whole community. He said that strips and gores on the zoning map or strips of property in a different zone from a majority of the property do not make sense. He said that it is not true that owners in the R-½ Zone always gain and owners in the R-1 Zone will lose. He said that taking or getting some develop potential is not a compensable issue. He said that there is greater certainty with the zone boundary line along the property line than when the boundary line splits the lot in an unusual manner. Attorney Gleason submitted a legal memorandum. He said that the uses on the site won't change from residential to commercial or industrial use. He said that the current system is confusing to property owners, land surveyors and even the staff. He said that it is not unusual for a Commission to have nay sayers to attend a

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Public Hearing but that the Commission should proceed with its attempt to clarify this confusing situation.

Attorney Gleason submitted a handout showing the differences between the R-½ and R-1 Zones. He said that a land surveyor for a previous owner of his client's property at 51 Old Farm Road had submitted a plan for an addition in 1990. That addition was deemed to be in the R-½ Zone and complied with the setback requirements. A Certificate of Occupancy for the addition was issued because the Zoning Enforcement Officer had determined that the zone line was at the back property line.

Barbara Gardner of 45R Old Farm Road submitted a letter. She submitted a drawing illustrating how close the neighbors could build if the zone change was approved. She said that the Commission should leave the zoning boundary where it is (with part of the R-1 Zone being on a portion of the neighbor's property).

Mr. Gardner said that the Commission should rezone the Hooper property all into the R-1 Zone because it has over 1.5 acres.

There being no further comments regarding this matter, the following motion was made: that the Commission close the Public Hearing regarding this application. The motion was made by Mr. Kenny, seconded by Mrs. Forman and unanimously approved.

Mr. Damanti then read the next agenda item:

**Coastal Site Plan Review #187, Land Filling & Regrading Application #107, Richard & Robin Woods, 137 Five Mile River Road.** Proposing to demolish existing residence and garage, and construct a new single-family residence and garage; construct a garage/workshop; install septic system galleries; repair an existing seawall, install walkway to dock, and perform related site development activities within a regulated area. The subject property is located on the east side of Five Mile River Road, approximately 1150 feet south of its intersection with Davis Lane, and is shown on Tax Assessor's Map #67, as Lot #5 in the R-1/2 Zone.

Jeff McDougal, of William Seymour & Associates Land Surveyors, represented the applicants. He explained that the applications involve substantial alterations to the property at 137 Five Mile River Road. New septic systems galleries near the Five Mile River have been approved by the Environmental Protection Commission as well as the Health Official. Since they are proposed within 100 feet of mean high water, they cannot be installed unless and until approval from the Planning & Zoning Commission is also obtained. The proposed work also involves replacing the existing house with a new structure. The new house would be 70' from the mean high water line of the Five Mile River and it would be elevated substantially higher than the river. The plan is to tear down the existing house from the uphill side of the property (away from the river) and construct a new residence in its place. The existing septic fields will be reused and rebuilt, if needed. Additional leaching fields are proposed near the Five Mile River.

Mr. McDougal said that the application has been referred to the Connecticut Department of Environmental Protection. John Gaucher on behalf of the DEP has responded. Mr. McDougal said that there are no negative comments but there are several things that must be addressed.

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These include comments about the pier which was built prior to 1980. In 1999, the DEP issued an after the fact permit to the previous property owner. More floats have been added by the previous owner since then and those additional floats need to be removed so that the pier complies with the DEP approved plans.

Mr. McDougal said that there will be two garage structures. One garage on the south side of the property will be attached to the proposed dwelling. The detached garage on the north side of the property will primarily be used as a workshop area by Mr. Woods. It will not be used for commercial purposes. Mr. McDougal said that the parcel contains 0.67 acres and the plan has been designed to comply with the coastal site plan policies. The filling and regrading is minimal but some filling and regrading is within 15' the property lines and/or more than 25' away from the proposed structures and therefore requires Special Permit approval from the Commission.

Dick Woods of 174 Mansfield Avenue explained that he is the owner of the site and that the proposed workshop with one car garage will not be used for commercial purposes. It will be a workshop area for him to work on household projects and his boat. He said that the new leaching fields of the septic system will be lower than the existing house and will require the installation of a retaining wall and some filling and regrading. The plans have been revised in accordance with the DEP comments to minimize the height of the retaining wall and the extent of the regrading. He said that the existing sea wall will remain the same size with respect to height and length. The second wall (not adjacent to the mean high water line) will be increased in height and length to accommodate the septic leaching fields and to hold back the fill. Approximately 250 to 350 cubic yards of fill will be needed for the septic system work. He said that most of that fill should come from the excavation involved in the house construction. Mr. Woods said that the impervious area on the site will increase due to the expansion of the driveway and house. They will add dry wells per the DEP comments so that the additional storm water run off will not be discharged directly toward the Five Mile River. He noted that many decks on the existing house are being removed from the rear of the house.

Commission members reviewed the plans. Director of Planning, Jeremy Ginsberg, noted that the comments from the Department of Environmental Protection had been received and forwarded to the Commission members. He said that the plans had also been referred to the Southwestern Regional Planning Agency and to the City of Norwalk. No comments were received from either of those entities. There being no further comments or questions from the public nor Commission members, the following motion was made: that the Commission close the Public Hearing regarding this application. The motion was made by Mr. Spain, seconded by Mrs. Forman and unanimously approved.

Chairman Damanti read the following agenda item:

**Subdivision Application #603, David & Sabina Harris, 1749 Boston Post Road.** Proposing to subdivide the existing 2.004 acre property into three lots and an open space parcel and perform related site development activities. The subject property is located on the north side of Boston Post Road, approximately 700 feet west of its intersection of Renshaw Road, and is shown on Tax Assessor's Map #41, as Lots #5 and #6 in the R-1/3 Zone.

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Jeffrey McDougal, Land Surveyor from William W. Seymour & Associates, represented the applicant. He said that the property is just slightly less than two acres in size and is located in an R1/3 Zone. There are two residential structures on the property. The proposal is to divide the site into three separate lots. The existing farmhouse would be located on the southwestern most lot. The second dwelling will be located on the center lot and the northern lot will be vacant. The vacant lot would be on the northeast portion of the site, closest to Stony Brook. The open space parcel will be on the rear portion of the site. Mr. McDougal explained that this proposed subdivision would result in the elimination of the nonconforming use (having more than one dwelling unit on a property). Each parcel will conform to the zoning and subdivision regulations and they intend to create at least one new driveway from the Boston Post Road into the easterly or northerly property.

Mr. McDougal said that they have applied to and obtained a permit from the Environmental Protection Commission to use a portion of the wetlands area for storm water retention. They are still awaiting EPC action. He said that each house will be served by sanitary sewers and public water. He acknowledged that permits from the Connecticut Department of Transportation (DOT) will be needed for the new driveway or driveways. He said that they may create more than one new driveway depending on the DOT's response to the application.

John Martucci said that they sent the plans to the Connecticut Department of Transportation regarding the driveways and the storm drainage. He said that the drainage was approved with conditions but the driveway issue had not been resolved.

There was considerable concern expressed by the Commission members regarding the telephone poles near the sidewalks, the driveway locations, the large hedge row across the front of the property that obstructs portions of the sidewalk, and other issues. They also noted that they would need to continue the Public Hearing in order to get a decision from the Environmental Protection Commission and more input from the Connecticut DOT.

There were no comments from the public. The following motion was made: that the Commission continue the Public Hearing on this matter on October 28, 2003. The motion was made by Mr. Bigelow, seconded by Mr. Conze and unanimously approved.

## **GENERAL MEETING**

*Discussion, deliberations, and possible decisions regarding the following:*

Chairman Damanti read the following agenda item:

**Coastal Site Plan Review #185, Flood Damage Prevention Application #197, Land Filling & Regrading Application #105, T. Mark & Margaret Maybell, 21 Tokeneke Trail.** Proposing to restacking of existing seawall; installation of new lawn and planting area; addition of stone steps; and construction of stonewall and perform related site development activities within regulated areas. The subject property is located on the south side of Tokeneke Trail approximately 1,200 feet southwest of its intersection with Runkenhage Road, and is shown on Tax Assessor's Map #69, as Lot #37 in the R-1 Zone.

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After a brief discussion, the following motion was made: that the Commission waive the process of reading the entire draft Resolution aloud because each member of the Commission has had an opportunity to review the draft prior to the meeting. The motion was made by Mr. Kenny, seconded by Mr. Bigelow and unanimously approved.

The following motion was then made: that the Commission adopt the following Resolution to approve the project subject to the conditions and stipulations as detailed in the Resolution:

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ADOPTED RESOLUTION  
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Application Number: Coastal Site Plan Review #185  
Flood Damage Prevention Application #197  
Land Filling & Regrading Application #105

Tax Assessor's Map #69 Lot #37  
Street Address: 21 Tokeneke Trail

Name and Address of Property Owner: T. Mark & Margaret M. Maybell  
And Applicant: 9 Cross Road  
Darien, CT 06820

Name and Address of McKee Patterson  
Applicant's Representative: Austin Patterson Disston Architects, LLC  
376 Pequot Avenue  
Southport, CT 06490

Activity Being Applied For: Proposing to restacking of existing seawall; installation of new lawn and planting area; addition of stone steps; and construction of stonewall and perform related site development activities within regulated areas.

Property Location: The subject property is located on the south side of Tokeneke Trail approximately 1,200 feet southwest of its intersection with Runkenhage Road.

Zone: R-1

Date of Public Hearing: September 16, 2003

Time and Place: 8:00 P.M. Room 206 Town Hall

Publication of Hearing Notices  
Dates: September 4 & 11, 2003 Newspaper: Darien News-Review

Date of Action: September 23, 2003 Action: GRANTED WITH STIPULATIONS

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Scheduled Date of Publication of Action: Newspaper: Darien News-Review  
October 2, 2003

The Commission has conducted its review and findings on the bases that:

- the proposed use and activities must comply with all provisions of Sections 400, 810, 820 and 850 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted plans, and the statements of the applicant whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

1. The application consists of four basic parts: 1) restacking of existing seawall; 2) installation of new lawn and planting area; 3) addition of stone steps; and 4) construction of a stone retaining wall. The seawall will be hand restacked, and no additional seawall will be constructed. A shoreline revetment planting bed will be located on the landward side of that seawall.
2. According to the applicant's representative, the purpose of the proposed evergreen screening is to provide buffering from the adjacent residential property. At the public hearing, the applicant's representatives noted that the retaining wall will be used to reduce an existing slope from 41% down to 19%. The retaining wall will be constructed adjacent to the existing driveway.
3. The site plan has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.
4. The proposal conforms to the standards for approval as specified in Section 1005 (a) through (g) of the Darien Zoning Regulations.
5. In accordance with the submitted information, the proposed activities will have no adverse impacts on flooding on adjacent properties. Although some of the regrading and soil stabilization work will be in the Flood Hazard Area, the house location is not within the Flood Hazard Area.
6. The Commission finds that the proposed activities, if properly implemented, are not contrary to the goals, objectives and policies of the Coastal Area Management Program.

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7. The Commission has considered all evidence offered at the Public Hearing regarding the character and extent of the proposed activities, the land involved, the possible effects of the activities on the subject property and on the surrounding areas, and the suitability of such actions to the area for which it is proposed.

NOW THEREFORE BE IT RESOLVED that Coastal Site Plan Review #185, Flood Damage Prevention Application #197 and Land Filling and Regrading Application #105 are hereby modified and granted subject to the foregoing and following stipulations, modifications and understandings:

- A. Construction of walls and steps, installation of planting, and regrading shall be in accordance with the plans entitled:
- Site Plan Maybell Residence 21 Tokeneke Trail, by Austin Patterson Disston Architects and Oehme, van Sweden & Associates, Inc., scale 1"=20', last revised 08/15/03, Sheet L1.
  - Site Details Maybell Residence 21 Tokeneke Trail, by Austin Patterson Disston Architects and Oehme, van Sweden & Associates, Inc., scale as noted, last revised 08/15/03, Sheet L2.
  - Planting Details Maybell Residence 21 Tokeneke Trail, by Austin Patterson Disston Architects and Oehme, van Sweden & Associates, Inc., scale as noted, last revised 08/15/03, Sheet L3.
- B. State of Connecticut DEP has jurisdiction over specific portions of this property, particularly that area below the Mean High Water Line and activities that could impact tidal wetlands. The Planning and Zoning Commission has no jurisdiction below mean high water or in the tidal wetlands. All activity adjacent to or impacting tidal wetlands and/or below mean high water must be submitted by the applicant to, and then reviewed and specifically acted upon by DEP before such work can take place. To complete the Commission's file, the applicant shall provide to the Commission, a copy of any permits or approvals obtained from the DEP.
- C. The applicant shall utilize the sediment and erosion controls illustrated on the plans and any additional measures as may be necessary due to site conditions. These sediment and erosion controls shall be installed and maintained to minimize any adverse impacts during the construction and until the area has been revegetated or restabilized. The Planning and Zoning Department shall be notified prior to commencement of work and after the sedimentation and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and are as per the approved plans. All erosion control measures must be maintained until the disturbed areas are stabilized.
- D. Because of the minor nature of the land filling and regrading portion of this project, a performance bond is hereby waived.
- E. The granting of this Permit does not relieve the applicant of responsibility of complying with all applicable rules, regulations, and codes of other Town, State, or other regulating agencies. This includes, but is not limited to, approval from the Darien Health Department and Building Department for installation of the irrigation system, and approval from State DEP as noted above.



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- F. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke this permit as it deems appropriate.
- G. This permit shall be subject to the provisions of Sections 815 and 829f of the Darien Zoning Regulations, including but not limited to implementation of the approved plan within one year of this action (September 22, 2004). This may be extended as per Sections 815 and 829f.

All provisions and details of the plans shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations and the signing of the final documents by the Chairman. The filing of a Special Permit form in the Darien Land Records shall be submitted to the Planning and Zoning Department within 60 days of this action or this approval shall become null and void.

The motion was made by Mr. Kenny, seconded by Mr. Bigelow and unanimously approved.

Chairman Damanti read the following agenda item:

**Land Filling & Regrading Application #104, Patricia Annecchino, 300 Brookside Road.**  
Proposing to remove existing driveway and construct a new driveway approximately 55 feet south of the existing location with parking court, and perform related site development activities. The subject property is located on the east side of Brookside Road, approximately 250 feet south of its intersection with Marianne Road, and is shown on Tax Assessor's Map #4, as Lot #16 in the R-2 Zone.

The following motion was made: that the Commission waive the process of reading the entire draft Resolution aloud because each member of the Commission has had an opportunity to review the draft prior to the meeting. That motion was made by Mrs. Forman, seconded by Mr. Spain and unanimously approved.

The following motion was then made: that the Commission adopt the following Resolution to grant approval to the project subject to the conditions and stipulations in the Resolution:

**PLANNING AND ZONING COMMISSION  
ADOPTED RESOLUTION  
September 23, 2003**

Application Number: Land Filling and Regrading Application #104

Tax Assessor's Map #4 Lot #16

Name and Address of Property Owner: Jeff & Patricia Annecchino  
300 Brookside Road

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Darien, CT 06820

Name and Address of Applicant's Representative: James A. Thompson, Architect  
2 Lafayette Court  
Greenwich, CT 06830

Activity Being Applied For: Proposing to remove existing driveway and construct a new driveway approximately 55 feet south of the existing location with parking court, and perform related site development activities.

Property Location: The subject property is located on the east side of Brookside Road, approximately 250 feet south of its intersection with Marianne Road.

Zone: R-2 Zone

Date of Public Hearing: September 16, 2003

Time and Place: 8:00 P.M. Room 206 Town Hall

Publication of Hearing Notices

Dates: September 4 & 11, 2003

Newspaper: Darien News-Review

Date of Action: September 23, 2003

Action: APPROVED WITH CONDITIONS

Scheduled Date of Publication of Action:  
October 2, 2003

Newspaper: Darien News-Review

The Commission has conducted its review and findings on the bases that:

- the proposed activities must comply with all provisions of Sections 400, 850 and 1000 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed activities are described in detail in the application, the submitted plans, and the statements of the applicant whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

1. The proposal is to fill and regrade as part of the relocation of the existing driveway, to an area approximately 55 feet south of the existing driveway. This will improve the existing sight lines along Brookside Road and provide a less steep access to the front courtyard area. There is now a curve in Brookside Road that limits sight lines to the south using the existing

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driveway. The new driveway has been specifically located to avoid having vehicle headlights shine directly towards the front door of the neighbor's house across the street.

2. The site plan has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.
3. The proposal conforms to the standards for approval as specified in Section 1005 (a) through (g) of the Darien Zoning Regulations.

NOW THEREFORE BE IT RESOLVED that Land Filling Application #104 is hereby approved subject to the foregoing and following stipulations, modifications and understandings:

- A. The filling and regrading shall be in accordance with the following plans submitted to the Commission:
  - Anecchino Residence 300 Brookside Road, Darien, CT Site Plan by James A. Thompson Architects, dated 8/13/03, Sheet SP-101.
- B. Due to the minor nature of the project, the provision of a Performance Bond is hereby waived.
- C. During construction of the replacement driveway, the applicant shall utilize any additional measures as may be necessary due to site conditions. Those sediment and erosion controls shall be installed to properly manage storm water runoff and to minimize any adverse impacts during the construction and until the area has been revegetated or restabilized. The Planning and Zoning Department shall be notified prior to commencement of work and after the sedimentation and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and are as per the approved plans. All erosion control measures must be maintained until the disturbed areas are stabilized.
- D. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- E. The granting of this approval does not relieve the applicant of the responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency.
- F. This permit shall be subject to the provisions of Section 858 of the Darien Zoning Regulations, including but not limited to, implementation and completion of the approved plan within one (1) year of this action (September 22, 2004). This may be extended as per Section 858.

All provisions and details of the plan shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations and the signing of the final documents by the Chairman. A Special Permit form shall be filed in the Darien Land Records within 60 days of this action or this approval shall become null and void.

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The motion to approve the application was made by Mrs. Forman, seconded by Mr. Spain and unanimously approved.

There being no further business, the meeting was adjourned at 12:10 a.m.

Respectfully submitted,

David J. Keating  
Assistant Director of Planning

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